

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

United States of America,

Case No.: 2:08-cr-00199-JAD-PAL

Plaintiff

v.

**Order Denying Motion for Early
Termination of Supervised Release**

Frank Louis Smedile,

[ECF No. 55]

Defendant

Frank Smedile is five years into a ten-year term of supervision after completing a 97-month sentence for receipt of child pornography.¹ Smedile now moves for early termination of his supervision period, citing his full compliance with all conditions of supervision, the successful completion of his rehabilitative treatment, and his desire to travel out of state for business.² The government opposes his motion, noting that supervisees are expected to be fully compliant with their supervisory terms and that those terms do not inhibit Smedile's out-of-state business travel. While the court is encouraged by Smedile's performance, it does not find that he has established a basis for early termination and denies his motion.

Discussion

"After considering a subset of the sentencing factors set forth in 18 U.S.C. § 2553(a), a court may terminate a term of supervised release" after the expiration of the first year of supervised release if the court "is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice."³ Section 2553(a) factors include the nature and

¹ ECF No. 52 (judgment).

² ECF No. 55 (motion for early termination of supervised relief).

³ *United States v. Emmett*, 749 F.3d 817, 819 (9th Cir. 2014) (quoting 18 U.S.C. § 3583(e)(1)).

1 circumstances of the offense; the defendant's history and characteristics; the need to deter
 2 criminal conduct, protect the public from the defendant's further crimes, and give the defendant
 3 needed resources that the probation office can provide; the sentence and sentencing range; and
 4 the need to avoid unwarranted sentencing disparities.⁴ Generally, "[i]t is [the] defendant's
 5 burden to establish that he is entitled to the rarely-granted remedy of early termination of
 6 supervised release."⁵ "This is usually accomplished by alerting the district court to 'unforeseen'
 7 or 'changed circumstances' that implicate [the] initial sentencing decision and analysis."⁶

8 Smedile has not demonstrated that early termination is warranted. Many of the bases
 9 Smedile proffers for early termination—including the nature of his offense, his criminal history,
 10 likelihood of recidivism, and mental-health treatment—were already considered by the judge in
 11 his initial sentencing determination⁷ and "cannot possibly merit relief" under § 3583(e)(1).⁸
 12 Smedile's crimes are serious: his demand for child pornography encouraged the production and
 13 distribution of further pornography.⁹ He was also already given the low end of his sentencing

14 _____
 15 ⁴ 18 U.S.C. §§ 3553(a), 3583(e)(1).

16 ⁵ *Emmett*, 749 F.3d at 824 (Nguyen, J., dissenting on other grounds) (citing *United States v.*
 17 *Weber*, 451 F.3d 552, 559 n.9 (9th Cir. 2006) ("[C]ourts have required the defendant, as the party
 18 receiving the benefit of early termination, to demonstrate that such a course of action is
 19 justified.")). Smedile asserts that the Supreme Court's decision in *Tapia v. United States*, 564
 20 U.S. 319 (2011), somehow altered this standard. See ECF no. 55 at 7–8. It did not. *Tapia*
 21 merely indicated that the Sentencing Reform Act precluded courts from lengthening a
 22 defendant's prison term to promote rehabilitation and had no effect on the standard of proof for
 23 early termination motions. *Tapia*, 564 at 327.

⁶ *Emmett*, 749 at 824 (Nguyen, J., dissenting) (quoting *United States v. Miller*, 205 F.3d 1098,
 1101 (9th Cir. 2000)).

⁷ See ECF No. 39 at 3–8 (sealed); see also ECF No. 48 at 2 (noting that his private evaluators
 determined he was unlikely to recidivate and he did not commit pedophilia).

⁸ *Emmett*, 749 at 824 (Nguyen, N., dissenting) (citing *United States v. Carty*, 520 F.3d 984, 992
 (9th Cir. 2008)).

⁹ *United States v. Adams*, 343 F.3d 1024, 1032 (9th Cir. 2003) (quoting 136 Cong. Rec. at
 S4730)).

1 range and a ten year supervisory period, instead of a lifetime supervisory period.¹⁰ Each of these
 2 factors counsels against granting early termination.

3 Smedile's three new justifications—namely, that he has complied with his supervised
 4 release terms, completed his sex-offender treatment program, and would like to travel out of state
 5 to purchase rental properties¹¹—do not tip the balance of § 3553(a) factors in favor of early
 6 termination. Perfect compliance does not justify a reduction in a supervised-release term
 7 because “[i]t is a supervisee’s obligation to strictly comply with the terms of supervised
 8 release.”¹² And, as the government points out in its undisputed opposition, Smedile only
 9 finished his treatment a few weeks ago and it is premature to assume he will not recidivate
 10 absent consistent counseling.¹³ Finally, the terms of Smedile’s supervision do not tangibly limit
 11 his ability to travel out of state to purchase or manage his rental properties.¹⁴ The court thus
 12 cannot conclude that the § 3553(a) factors or the interests of justice support an early termination
 13 of Smedile’s supervision.

14 **Conclusion**

15 The sentencing judge saw fit to impose a ten-year term of supervised release as part of
 16 Smedile’s sentence. Smedile has not demonstrated that a reduction of his term is warranted. IT

17
 18 ¹⁰ See ECF No. 52.


19 ¹¹ See ECF No. 55.

20 ¹² See *United States v. Misraje*, 888 F.3d 1113, 1116 (9th Cir. 2018).

21 ¹³ See ECF No. 58 at 6 (“We have not seen how Smedile will behave without consistent
 22 treatment and this treatment may very well be one of the reasons he has not re-offended.”); *see*
 also ECF No. 55 at 16 (“His progress and overall risk level to the community can only be based
 on his willingness to utilize the treatment techniques and his ability to live within the community
 in an appropriate manner.”).

23 ¹⁴ ECF No. 58 at 5 (“Smedile is free to travel anywhere in the State of Nevada. He can also
 travel out of state for short periods of time with his probation officer’s approval Smedile is
 not limited to this ‘one-industry city’ like he claims”).

1 IS THEREFORE ORDERED that Smedile's motion for early termination of his supervised
2 release term [ECF No. 55] is **DENIED**.

3
4 
U.S. District Judge Jennifer A. Dorsey
October 1, 2020